

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

KEVIN LEE CROOK,)	
)	
Plaintiff,)	
)	
v.)	No. 2:13-CV-04182-NKL
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

ORDER

Before the Court is the Commissioner’s motion to dismiss Plaintiff Kevin Lee Crook’s Complaint. [Doc. # 7] For the reasons set forth below, the Commissioner’s motion to dismiss is GRANTED and this case is DISMISSED, without prejudice.

I. Background

Crook filed an application with the Social Security Administration (“SSA”) for disability insurance benefits on December 27, 2010. The SSA denied his application on July 6, 2011, because it was determined that he was “not precluded from performing some work-like activities.” [Doc. # 7-1 at 6] The SSA subsequently mailed Crook a letter notifying him of the denial of his claim. Along with the notice of denial, the letter provided him with information regarding his right to appeal the decision. The letter informed Crook that he could initiate an appeal by requesting a hearing within 60 days of receiving notice of the denial.

Crook did not file a request for until November 10, 2011, more than 60 days after the denial notice. On December 16, 2011, an Administrative Law Judge (“ALJ”) dismissed Crook's request for a hearing because it was untimely and because Crook had showed no good cause for extension.

Crook then petitioned the SSA’s Appeals Council, asking it to review the administrative dismissal of his request for a hearing. The Appeals Council, however, denied Crook's request after finding no reason to overturn the ALJ’s decision. The Appeals Council also informed Crook that its decision was “the final decision of the Commissioner of Social Security” in his case. [Doc. # 7-1 at 14]

Crook then filed a complaint with this Court seeking judicial review of the SSA’s denial of both his request for a hearing and his application for disability insurance benefits. [Doc. # 3]

II. Discussion

The Commissioner moves to dismiss Crook’s Complaint for lack of subject matter jurisdiction. The facts of this case are not disputed. But for purposes of ruling on this motion to dismiss, the Court accepts as true the facts alleged in Crook’s Complaint. *Charvat v. Mutual First Federal Credit Union*, 725 F.3d 819, 821-22 (8th Cir. 2013).

The Court has subject matter jurisdiction to review “any final decision of the Commissioner of Social Security made after a hearing to which” the Commissioner was a party. 42 U.S.C. § 405(g). A “final decision” for purposes of judicial review only occurs if a claimant “has met the requirements specified” by the SSA. *Smith v. Heckler*, 761 F.2d 516, 518 (8th Cir. 1985). A “final decision” is therefore predicated on whether or

not the claimant had exhausted his administrative remedies in accordance with the rules promulgated by the SSA. *Id.*; see *Hilmes v. Sec’y of Health & Human Servs.*, 983 F.2d 67, 69-70 (6th Cir. 1992); *Watters v. Harris*, 656 F.2d 234, 238-39 (7th Cir. 1980). In *Smith v. Heckler*, the Eighth Circuit held that the SSA’s denial of an untimely request for a hearing was not a “final decision,” and not available for judicial review, because “[s]uch action [did] not address the merits of the claim, and thus [could not] be considered appealable, as [could] the . . . decisions and denials of *timely* requests for review.” 761 F.2d at 518 (emphasis in original).

Similarly, because Crook failed to timely file a request for review with the SSA, and because he failed to show good cause for the untimely filing, the denial of Crook’s request for a hearing is not a “final decision” for purposes of judicial review. Therefore, the Court is without jurisdiction to review Crook’s claim.

III. Conclusion

For the reasons set forth above, the Commissioner’s motion to dismiss [Doc. 7] is GRANTED and this case is DISMISSED, without prejudice.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: February 26, 2014
Jefferson City, Missouri